No. 6122

DENMARK
and
AUSTRIA

Agreement (with Final Protocol) for the avoidance of double taxation with respect to taxes on income and fortune. Signed at Vienna, on 23 October 1961

Official texts: Danish and German.

Registered by Denmark on 16 April 1962.

DANEMARK
et
AUTRICHE

Convention (avec Protocole final) tendant à éviter la double imposition en matière d'impôts sur le revenu et sur la fortune. Signée à Vienne, le 23 octobre 1961

Textes officiels danois et allemand.

Enregistrée par le Danemark le 16 avril 1962.

[TRANSLATION — TRADUCTION]

No. 6122. AGREEMENT[1] BETWEEN THE KINGDOM OF DENMARK AND THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FORTUNE. SIGNED AT VIENNA, ON 23 OCTOBER 1961

His Majesty, The King of Denmark, and the Federal President of the Republic of Austria, desiring to avoid so far as possible double taxation with respect to taxes on income and fortune, have agreed to conclude an agreement.

For that purpose they have appointed as their plenipotentiaries :

His Majesty, the King of Denmark :

Mr. Sigvald Alexander Kristensen, Ambassador Extraordinary and Plenipotentiary of Denmark in Vienna.

The Federal President of the Republic of Austria :

Sektionschef Dr. Josef Stangelberger and *Ministerialrat* Dr. Otto Watzke of the Federal Ministry of Finance.

The plenipotentiaries, having exchanged their full powers, found in good and due form, have agreed as follows :

Article 1

(1) This Agreement shall apply to individuals and bodies corporate domiciled, within the meaning of article 2, in the Republic of Austria, in the Kingdom of Denmark or in both Contracting States.

(2) This Agreement shall apply to taxes (including surtaxes) on income and fortune levied on behalf of either of the two Contracting States or their political sub divisions, regardless of the manner in which they are levied.

(3) The expression "taxes on income and fortune" shall be deemed to mean all taxes levied on total income or total fortune or on elements of income or fortune, including taxes on profits derived from the alienation of movable or immovable property, and taxes on increase in fortune.

(4) The taxes to which this Agreement applies are, at present, in particular :

[1] Came into force on 26 February 1962, upon the exchange of the instruments of ratification in Copenhagen, in accordance with article 27.

1. In the Republic of Austria :
   (*a*) The income tax (*Einkommensteuer*) ;
   (*b*) The corporation tax (*Körperschaftsteuer*) ;
   (*c*) The tax on fortune (*Vermögensteuer*) ;
   (*d*) The contribution from income for the promotion of residential building and for the equalization of family burdens (*Beitrag vom Einkommen zur Förderung des Wohnbaues und für Zwecke des Familienlastenausgleiches*) ;
   (*e*) The tax on director's fees (*Aufsichtsratsabgabe*) ;
   (*f*) The business tax (*Gewerbesteuer*) [including the pay-roll tax (*Lohnsummensteuer*)] ;
   (*g*) The land tax (*Grundsteuer*) ;
   (*h*) The tax on agricultural and forestry enterprises (*Abgabe von land- und forstwirtschaftlichen Betrieben*) ;
   (*i*) The tax on the land value of undeveloped real estate (*Abgabe vom Bodenwert bei unbebauten Grundstücken*) ;
   (*j*) The tax on property exempt from the inheritance tax (*Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind*).
2. In the Kingdom of Denmark :
   (*a*) The ordinary and extraordinary State income tax (*ordinaere og ekstraordinaere indkomstskat til staten*) ;
   (*b*) The State tax on fortune (*formueskat til staten*) ;
   (*c*) The communal income tax (*kommunale indkomstskat*) ;
   (*d*) The national pension fund contribution (*folkepensionsbidrag*) ;
   (*e*) The seaman's tax (*sømandsskat*) ;
   (*f*) The special income tax (*saerlige indkomstskat*) ;
   (*g*) The church taxes (*kirkelige afgifter*) ;
   (*h*) The land taxes (*ejendomsskatter*).

(5) This Agreement shall also apply to any taxes of the same or of like nature which may be levied in the future in addition to or in place of the existing taxes. The chief financial authorities of the two States shall at the end of each year inform each other of any changes which have been made in their taxation laws.

(6) The chief financial authorities of the two States shall resolve by agreement any doubts which may arise as to the taxes covered by this Agreement.

(7) The chief financial authorities mentioned in this Agreement are, in the case of the Republic of Austria, the Federal Ministry of Finance, and in the case of the Kingdom of Denmark, the Minister for Finance.

Article 2

(1) In this Agreement the expression "a person domiciled in one of the Contracting States" means any individual or body corporate liable under the laws of that State to taxation therein by reason of domicile, residence, place of actual management or other similar criterion.

(2) Where an indivdual is domiciled, within the meaning of paragraph (1), in both of the Contracting States, the following shall apply :

(*a*) An individual shall be deemed to be domiciled in the Contracting State in which he has a permanent residence available to him. If he has a permanent residence available to him in both States, he shall be deemed to be domiciled in the Contracting State with which his personal and economic relations are closer (centre of vital interests) ;

(*b*) If it cannot be determined in which of the two Contracting States the individual has his centre of vital interests, or if he has no permanent residence available to him in either State, he shall be deemed to be domiciled in the Contracting State in which he habitually resides ;

(*c*) If he habitually resides in both or neither of the Contracting States, he shall be deemed to be domiciled in the State of which he is a national ;

(*d*) If he is a national of both or neither of the Contracting States, the chief financial authorities of the two States shall settle the question by agreement.

(3) If a body corporate is domiciled, within the meaning of paragraph (1), in both Contracting States, it shall be deemed for the purposes of this Agreement to be domiciled in the State in which its place of actual management is situated. The same shall apply to partnerships and other associations which are not bodies corporate under the national laws by which they are governed.

Article 3

Where a person domiciled in one of the Contracting States receives income in respect of which no express provision is made in this Agreement, the said income shall be taxable by that State.

Article 4

(1) Where a person domiciled in one of the Contracting States derives income from immovable property, the said income shall be taxable by the State in which the property is situated.

(2) The term "immovable property" shall be defined in accordance with the laws of the Contracting State in which the property is situated. It shall in any event include property accessory to immovable property, livestock and equipment of agricultural and forestry enterprises, rights to which the provisions of private law concerning real property apply, rights of usufruct in immovable property, and rights to variable or fixed payments for the use of mineral deposits, springs and other natural resources. Ships and aircraft shall not be deemed to be immovable property.

(3) The provisions of paragraphs (1) and (2) shall apply to income derived from the direct use or the letting of immovable property or from the use in any other form of such property, including income from agricultural and forestry enterprises. They shall likewise apply to profits from the alienation of immovable property.

(4) The provisions of paragraphs (1) to (3) shall also apply to income from immovable property belonging to business enterprises and to income from immovable property used in the exercise of a profession.

Article 5

(1) Where a person domiciled in one of the Contracting States derives income from a business enterprise whose activities extend to the territory of the other State, the said income shall be taxable by the latter State only in so far as it is attributable to a permanent establishment of the enterprise which is situated in its territory.

(2) The provisions of paragraph (1) shall also apply to income derived from active or inactive participation in a corporate enterprise, other participation in the form of shares, mining shares (*Kuxe*), profit-participation certificates (*Genussscheine*), participating debentures (*Obligationen mit Gewinnbeteiligung*) and other securities, and shares in co-operative societies and private limited companies.

(3) The provisions of paragraphs (1) and (2) shall apply both to income derived from the direct use of the business enterprise and to income derived from the letting or use in any other form thereof; they shall also apply to income derived from the alienation of a business as a whole or of part of it, of a share in the business or of objects used in the business.

(4) The income to be attributed to the permanent establishment shall be that which would have accrued to it if it had been an independent enterprise engaged in the same or similar activities under the same or similar conditions and had carried on its activities as an independent enterprise.